

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10570 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BANTWA MUNICIPAL BOROUGH

Versus

GEB

Appearance:

MS SEJAL K MANDAVIA for Petitioner
MR GIRISH D BHATT for Respondent No. 1
VM PANCHOLI AGP for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner, Bantwa Municipal Borough, by this

petition under Article 226 of Constitution of India prayed for issuance of writ of mandamus or any other writ or direction in the nature of mandamus or any other appropriate writ order or direction directing the respondent No.1 - Gujarat Electricity Board to pay Octroi to it for the materials and the goods brought within the limits of petitioner Municipal Borough from 15/9/1996. Declaration has also been sought that the Gujarat Electricity Board is liable to pay Octroi and other taxes.

#. It is not in dispute that the exemption which has been granted to the Gujarat Electricity Board from payment of Octroi on all the materials and goods brought within the limit of municipal borough for the electrification purpose was cancelled under order of the State Government dated 25/9/96 Annexure-A. The Gujarat Electricity Board has not challenged this notification before this court nor it is the case of the Board that at any point of time the State Government itself has stayed this notification or ordered to be kept in abeyance.

#. Shri G.D.Bhatt, learned counsel for the Board submits that the Board has already made a representation to the State of Gujarat against this notification and prayed therein for grant of exemption to the Board from the payment of Octroi on all materials and goods brought within the limits of the petitioner municipal borough for the electrification purpose and so long as this representation is not decided this court may not grant any relief to the petitioner. I fail to see any justification in this submission made by Shri G.D.Bhatt, learned counsel for the Board. So long as the order Annexure-A is in force the Board is liable to pay the Octroi on the materials and goods, which are subject to the payment of Octroi, brought within the limits of the petitioner municipal borough. Merely because the representation is pending for consideration by State Government, against this order, or a prayer made therein for grant of exemption to the Board from payment of the octroi it is difficult to defer the hearing of this matter. Once this exemption is granted to the Board from payment of the Octroi is cancelled the liability to pay octroi forthwith fall upon the Board. The petitioner is legally entitled to recover octroi from the Board. It is unfortunate that in the facts of this case instead of paying the octroi the Board has dragged the petitioner in the litigation. The worst part is that though the Board has its own law officers but the law officers have not examined the matter in correct perspective. They also appears to have advised the Board incorrectly. After the

order Annexure-A, I fail to find any justification legal or equitable in the action of the Board not to pay the octroi to the petitioners. By merely filing of representation the operation of the order Annexure-A will not automatically stand stayed. Because of this illegal and wholly unreasonable attitude of Board this litigation is before this court. The petitioner has come up before this court for declaration that the Board is liable to pay octroi despite of the fact that the State Government has passed a specific order cancelling the benefit of exemption from payment of the octroi earlier granted to the Board. In the presence of these facts this attitude of the Board and more particularly its officers, because it is impersonal, deserves to be deprecated.

#. This petition has been filed in the year 1998 i.e. after about 2 years of the order Annexure-A, that goes to show that the petitioner has waited for reasonable period so that in the meanwhile the Board, if it so desire, may approach to the State Government in the matter.

#. In the result, this Special Civil Application is disposed of in terms that the Board is liable to pay octroy on the goods and material brought within the limits of the petitioner municipal borough from the date of the notification Annexure-A. Rule and Special Civil Application are disposed of accordingly. This decision will not come in the way of the Board or State Government to pass the appropriate order on the representation filed by the Board in the matter of grant of exemption to the Board from payment of octroi on the goods and material brought by the Board within the municipal limits. In case ultimately the Government decides to grant exemption to the respondent No.1 - Board or the order dated 25/9/96 is cancelled then that decision will prevail and not this decision given in this petition.

#. It is a case where the Board has unnecessarily dragged the petitioner in the litigation and I consider it to be a fit case where the cost has to be awarded to the petitioner of this litigation. The Board is directed to pay Rs.2,000/= towards costs to the petitioner.

(S.K.Keshote, J.)

*Pvv